

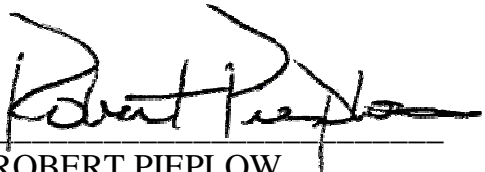


Construction Policy Bulletin

CB 03-5, Claim Administration Delegation of Authority

References: *Construction Manual*, Section 5-405, "Claim Payments"
Construction Manual, Section 5-406, "Overhead Claims"
Construction Manual, Table 5-4.1, "Delegation of Authority"
Executive Order 00-02-01

Effective Date: August 27, 2003

Approved: 
ROBERT PIEPLOW
Chief, Division of Construction

Approval Date: August 27, 2003

Background

The Division of Construction chief delegates various construction contract administration responsibilities to the district directors. However, the approval of major contract change orders and negotiated claim settlements is not delegated to the district directors. This construction bulletin describes the responsibilities of various Caltrans personnel in obtaining approval of contract change orders and negotiated claim or arbitration settlement reports that resolve construction disputes.

Existing Procedure

Table 5-4.1, "Delegation of Authority," of the *Construction Manual* details the claim administration processes and responsibilities for district construction and the Division of Construction.

New Procedure

This bulletin modifies Table 5-4.1, Section 5-406D(1), "Home Office Overhead," and Section 5-406D(2), "Field Office Overhead," of the *Construction Manual* to reflect the increased authority of the Division of Construction chief for negotiated claim settlements and to assure that Federal Highway Administration (FHWA) concurrence is obtained for claim settlements on federal oversight (nonexempt) projects.

The revised table is attached. The following additional minor changes in policies and procedures are also reflected in the table:

- The deputy district director or region division chief of construction obtains the necessary FHWA concurrence for negotiated claim settlements on nonexempt projects before an arbitration request is filed.
- The construction field coordinator obtains the necessary FHWA concurrence for negotiated claim settlements on nonexempt projects after an arbitration request has been filed.
- The FHWA transportation engineer is invited to attend meetings to discuss negotiated settlement offers on nonexempt projects.
- Form CEM-2702, "Overrun in Contract Time," is to be attached to the claim settlement report, if necessary.

The district remains responsible for obtaining FHWA concurrence for entitlement claims on nonexempt projects.

If you have questions regarding this construction bulletin, please contact Tim Buchanan with the Division of Construction at (916) 654-3088.

Attachments: Table 5-4.1

TB:sf

bc: CB Folder; Const. Subject File; Const. Author File

DELEGATION OF AUTHORITY

CLAIM ADMINISTRATION		
PERIOD	ITEM(S)	ENTITLEMENT AUTHORITY (Note 1)
Before Issuance of the Proposed Final Estimate	Notices, Protests, and Potential Claims	Authority to approve contract change orders resolving entitlement may be delegated as per the authority to approve contract change orders (Note 2).
<i>From:</i> Return of the Proposed Final Estimate <i>To:</i> Board of Review Meeting	Claims	<p>Authority to approve contract change orders resolving entitlement may be delegated as per the authority to approve contract change orders (Note 2).</p> <hr/> <p>For contract change orders subject to district approval (see Note 3 for overhead claims):</p> <ul style="list-style-type: none"> – Deputy district director or region division chief of construction approves; authority may be delegated to construction managers, but not construction engineers. – Fax copy to the Division of Construction contract change order engineer. <hr/> <p>For contract change orders subject to Division of Construction approval (see Note 3 for overhead claims):</p> <ul style="list-style-type: none"> – Deputy district director or region division chief of construction signs under “submitted by” on contract change order memorandum (Note 4). – Construction field coordinator provides signature of approval on contract change order memorandum (Note 4).
<i>From:</i> Board of Review Meeting <i>To:</i> District Director Determination	Claims	<p>Approvals of contract change orders resolving entitlement are subject to the district director’s determination and the delegation authority for contract change orders (Note 2).</p> <hr/> <p>For contract change orders subject to district approval (see Note 3 for overhead claims):</p> <ul style="list-style-type: none"> – Deputy district director or region division chief of construction approves; authority may be delegated to construction managers, but not construction engineers. – Fax copy to the Division of Construction contract change order engineer. <hr/> <p>For contract change orders subject to Division of Construction approval (see Note 3 for overhead claims):</p> <ul style="list-style-type: none"> – Deputy district director or region division chief of construction signs under “submitted by” on contract change order memorandum (Note 4). – Construction field coordinator provides signature recommending approval on contract change order memorandum (Note 4). – Division of Construction chief provides signature of approval on contract change order memorandum (Note 4).

Notes:

1. Entitlement – merit, even partial, requiring compensation per Public Contract Code, Section 10227 and the *Construction Manual*, Section 3-403, “Changes.”
2. *Construction Manual*, Section 5-311, “Contract Change Order Approval.”
3. Approval authority on contract change order memorandum for overhead entitlement:
 - Field office overhead: <\$200K, construction field coordinator; \$200K to \$1.0M, Division of Construction chief; >\$1.0M, deputy director, Project Delivery.
 - Home office overhead: = \$1.0M, chief, Division of Construction; >\$1.0M, deputy director, Project Delivery.
4. Revise the contract change order memorandum as appropriate.

DELEGATION OF AUTHORITY

CLAIM ADMINISTRATION											
PERIOD	ITEM(S)	NEGOTIATED SETTLEMENT AUTHORITY (Note 1)									
<i>From:</i> Start of Work <i>To:</i> Board of Review Meeting	Notices, Protests, Potential Claims, and Claims	<p>Approval authority and responsibilities for claim settlement reports depend on the settlement amount, as follows (Note 2):</p> <table> <tr> <th><u>Settlement</u></th><th><u>Responsible Party</u></th><th><u>Action</u></th></tr> <tr> <td>≤ \$1.0M</td><td> - district - deputy district director or region division chief of construction - construction field coordinator - Legal Division - Division of Construction chief </td><td> prepares report (Note 3) submits report for approval (Note 4) recommends approval recommends approval approves </td></tr> <tr> <td>> \$1.0M</td><td> - district - district director - construction field coordinator - Legal Division - Division of Construction chief - deputy director, Project Delivery </td><td> prepares report (Note 3) submits report for approval (Note 4) recommends approval recommends approval recommends approval approves </td></tr> </table>	<u>Settlement</u>	<u>Responsible Party</u>	<u>Action</u>	≤ \$1.0M	- district - deputy district director or region division chief of construction - construction field coordinator - Legal Division - Division of Construction chief	prepares report (Note 3) submits report for approval (Note 4) recommends approval recommends approval approves	> \$1.0M	- district - district director - construction field coordinator - Legal Division - Division of Construction chief - deputy director, Project Delivery	prepares report (Note 3) submits report for approval (Note 4) recommends approval recommends approval recommends approval approves
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> \$1.0M	- district - district director - construction field coordinator - Legal Division - Division of Construction chief - deputy director, Project Delivery	prepares report (Note 3) submits report for approval (Note 4) recommends approval recommends approval recommends approval approves									
<i>From:</i> Board of Review Meeting <i>To:</i> District Director Determination	Claims	<p>Approval authority and responsibilities for claim settlement reports depend on the settlement amount, as follows (Note 2):</p> <table> <tr> <th><u>Settlement</u></th><th><u>Responsible Party</u></th><th><u>Action</u></th></tr> <tr> <td>≤ \$1.0M</td><td> - district - district director - construction field coordinator - Legal Division - Division of Construction chief </td><td> prepares report (Note 3) submits report for approval (Notes 4 & 5) recommends approval recommends approval approves </td></tr> <tr> <td>> \$1.0M</td><td> - district - district director - construction field coordinator - Legal Division - Division of Construction chief - deputy director, Project Delivery </td><td> prepares report (Note 3) submits report for approval (Notes 4 & 5) recommends approval recommends approval recommends approval approves </td></tr> </table>	<u>Settlement</u>	<u>Responsible Party</u>	<u>Action</u>	≤ \$1.0M	- district - district director - construction field coordinator - Legal Division - Division of Construction chief	prepares report (Note 3) submits report for approval (Notes 4 & 5) recommends approval recommends approval approves	> \$1.0M	- district - district director - construction field coordinator - Legal Division - Division of Construction chief - deputy director, Project Delivery	prepares report (Note 3) submits report for approval (Notes 4 & 5) recommends approval recommends approval recommends approval approves
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Notes:

1. Negotiated Settlement – per Public Contract Code, Section 9201 and *Construction Manual*, Section 5-405B, “Claim Payments Based on Negotiated Settlements.”
2. Submit claim settlement reports to the Division of Construction (no exceptions). The contract change order memorandum does not replace the claim settlement report. Attach the contract change order and contract change order memorandum to the report before submitting to the Division of Construction. Attach Form CEM-2702, “Overrun in Contract Time,” to the claim settlement report if recommending action related to time extensions, liquidated damages, or engineering costs and inspection costs. Approval of the contract change order is subject to the normal delegation of authority. The Division of Construction contract change order engineer will provide a contract change order authorization or notify the district or region to authorize the contract change order. File the approved claim settlement report in the Division of Construction’s confidential files. Destroy all drafts.
3. The construction field coordinator, deputy district director or region division chief of construction, Legal Division representative and Division of Construction chief will meet to discuss the settlement offer. The FHWA transportation engineer will attend on nonexempt projects. If the offer is greater than \$1.0M, the deputy director of Project Delivery may also attend.
4. The deputy district director or region division chief of construction is responsible for obtaining FHWA concurrence with the settlement on nonexempt projects.
5. The chair of the Board of Review negotiates the settlement and submits the settlement report to the district director.

DELEGATION OF AUTHORITY

CLAIM ARBITRATION																							
PERIOD	ITEM(S)	NEGOTIATED SETTLEMENT AUTHORITY (Note 1)																					
<i>From:</i> Filing of Arbitration Complaint <i>To:</i> Arbitration	Settlement offer meeting: held when a contractor offers to settle claims before judgement.	Approval authority and responsibilities for claim settlement reports resolving claims in arbitration depend on the settlement amount, as follows (Note 2): <table><thead><tr><th><u>Settlement</u></th><th><u>Responsible Party</u></th><th><u>Action</u></th></tr></thead><tbody><tr><td rowspan="3">≤ \$1.0M</td><td>- Legal Division (Note 3)</td><td>prepares report & recommends approval</td></tr><tr><td>- construction field coordinator</td><td>recommends approval (Note 4)</td></tr><tr><td>- deputy district director or region division chief of construction</td><td>recommends approval</td></tr><tr><td>- Division of Construction chief</td><td>approves</td></tr><tr><td rowspan="4">> \$1.0M</td><td>- Legal Division (Note 3)</td><td>prepares report & recommends approval</td></tr><tr><td>- Division of Construction chief</td><td>recommends approval (Note 4)</td></tr><tr><td>- district director</td><td>recommends approval</td></tr><tr><td>- deputy director, Project Delivery</td><td>approves</td></tr></tbody></table>	<u>Settlement</u>	<u>Responsible Party</u>	<u>Action</u>	≤ \$1.0M	- Legal Division (Note 3)	prepares report & recommends approval	- construction field coordinator	recommends approval (Note 4)	- deputy district director or region division chief of construction	recommends approval	- Division of Construction chief	approves	> \$1.0M	- Legal Division (Note 3)	prepares report & recommends approval	- Division of Construction chief	recommends approval (Note 4)	- district director	recommends approval	- deputy director, Project Delivery	approves
	<u>Settlement</u>		<u>Responsible Party</u>	<u>Action</u>																			
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> \$1.0M	- Legal Division (Note 3)	prepares report & recommends approval																					
	- Division of Construction chief	recommends approval (Note 4)																					
	- district director	recommends approval																					
	- deputy director, Project Delivery	approves																					
Prediscovery settlement meeting: requested by the Legal Division to consider issuing a settlement offer.																							
Postdiscovery settlement meeting: requested by the Legal Division or Division of Construction to consider issuing a settlement offer.																							
Arbitration	Settlements: contractor offers or the Department issues before arbitrator award.	Division of Construction issues the contract change order and notifies the district/region to process estimate.																					
	Award	<ul style="list-style-type: none">– Approval authority and responsibilities for arbitration awards are the same as above.– If needed, the district processes request for additional funding.– The Division of Construction issues the contract change order and notifies the district or region to process estimate.																					

Notes:

1. Negotiated Settlement - per Public Contract Code, Section 9201 and *Construction Manual*, Section 5-405B, "Claim Payments Based on Negotiated Settlements."
2. Attach Form CEM-2702, "Overrun in Contract Time," to the claim settlement report if recommending action related to time extensions, liquidated damages, or engineering and inspection costs.
3. The construction field coordinator, deputy district director or region division chief of construction, Legal Division representative and Division of Construction chief will meet to discuss the settlement offer. The FHWA transportation engineer will attend on nonexempt projects. If the offer is greater than \$1.0M, the deputy director of Project Delivery may also attend.
4. The construction field coordinator is responsible for obtaining FHWA concurrence with the settlement on nonexempt projects.